IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.674 OF 1995

The Union of India]
(Through R.P.F.Lonavala)]
The State of Maharashtra]..Appellant
(Ori.Complainant)

Versus

1. Anil Sawala Sonawane]
Age 23 yrs.]
Resident of Kamgar Putla]
Zopadpatti, Shivajinagar]
Pune, Dist. Pune.]
]
2. Sandeep Pandurang Hanwate]
Age 32 yrs. r/o]
Kamgar Putla Zopadpatti,]
Shivajinagar, Pune,]
Dist. Pune.]
]
3. Suresh Dattatraya Bhosle]
Age 39 yrs.r/o Aagwali]
Chawl, Lonavala, At Post]
Lonavala Dist.Pune]..Respondents
(Ori.Accused)

....

Mr.A.S.Shitole, A.P.P. for State.
None for Respondent nos.1 to 3 though served

....

CORAM: SMT.V.K.TAHILRAMANI,J.
DATE : DECEMBER 2,2004

ORAL JUDGMENT:

1. Through this appeal, the appellant-State of Maharashtra challenges the judgment and order dated 31st January, 1995 passed by the learned Judicial

Magistrate, (Rly.) Court, Pune in R.C.C.No. 152 of 1992. By the said judgment and order, the learned Magistrate acquitted the respondents i.e. original accused nos.1 to 3 for the offence under Section 3(a) of the Railway Property (Unlawful Possession) Act, 1966.

2. Briefly stated the prosecution case is as under:

. That appellant no.1 Suresh Bhosle was the Manager of the Railway Canteen. On 18th September, 1993, he unauthorisedly sold some of the utensils of Railway Canteen to respondent no.1 Anil Sawala Sonawane and respondent no.2 Sandeep Pandurang Hanwate for Rs.1500/-. Hence, complaint came to be filed.

3. The charge (Exhibit-32) came to be framed against all the accused under section 3(a)of the Railway Property (Unlawful Possession) Act, 1966. The particulars of charge were read over and explained to all the accused. All the accused pleaded not guilty and claimed to be tried..d The accused no.3 i.e. respondent no.3 herein Suresh Dattatraya Bhosle examined himself on oath. He has also produced certified copy of Receipt No.6742 (Exhibit-45). It is the defence of the accused no.3 that he being the Manager of the Railway Canteen,

the said utensils were in his charge. The utensils were not in usable condition and as he was authorised to sell the dead stock, he sold the utensils to accused nos.1 and 2.

4. In support of its case, the prosecution examined four witnesses i.e. P.W.1 I.R.Thakkur who P.W.2 S.G.Parab who are the Inquiry Officers, P.W.3 V.K.Zhende who is the complainant and P.W.4 M.J.Sharma. After going through the evidence adduced by the prosecution, the learned Magistrate acquitted all the accused.

5. I have heard Shri.Shitole, learned A.P.P. for the appellant. None appears for the respondents though served. I have also perused the entire record of this case and this appeal is being disposed of on merits. After carefully considering the matter, I am of the opinion that this appeal deserves to be dismissed.

6. I shall first deal with the evidence of P.W.4 Mahavir Sharma. As per his evidence, on 18th September, 1993 he learnt that accused no.3 was unauthorisedly disposing of the railway canteen utensils without permission. P.W.4 Mr.Sharma visited the spot and found that accused no.3

S.D.Bhosle was selling utensils to accused nos.1 and 2 for Rs.1500/-. Hence, he informed R.P.F. Officer P.W.1 I.R.Thakkur. On receiving the information, P.W.1 Thakkur went to Lonavala Railway Station and noticed that accused no.3 S.D.Bhosle was about to dispose of the alleged utensils for Rs.1500/- to accused nos.1 and 2. He made inquiries from accused no.3 S.D.Bhosle who was running the railway canteen. P.W.1 Mr.Thakkur called panch witness and the utensils and amount of Rs.1500/- came to be seized under panchnama. Thereafter, P.W.4 Sharma handed over inquiry to P.W.2 Mr.Parab.

7. It is the case of the prosecution that accused no.3 unauthorisedly sold the utensils to accused nos.1 and 2. In the present case, the complainant is P.W. 3 V.K. Zhende. However, it is pertinent to note that P.W.3 Zhende as well as P.W.4 Sharma have admitted that they have not mentioned that the accused was disposing of the railway canteen utensils ‘unauthorisedly.’ The entire case is based upon the allegations of unauthorised sale. Yet this very important fact has not been stated in the charge report as well as in the complaint. This witness has admitted that the utensils were kept in the premises of the canteen. P.W.3 Zhende has admitted that the seized utensils were not in usable

condition. He had not verified the dead stock register of the railway canteen. It is the case of the defence that as the utensils were not in usable condition, the same came to be disposed of by accused no.3 S.D.Bhosle who was the Manager of the Railway Canteen as he was orally authorised by Mr.Zhende and Mr.Sharma to dispose of the said property.

8. Looking to the evidence of P.W.3 Shri.Zhende that the utensils were kept in the premises of railway canteen and that looking to the fact that the accused no.3 Bhosale was the Manager of railway canteen, it cannot be said that the possession of the utensils with accused no.3 Bhosle was unlawful or unauthorised. The accused also produced receipt from his department which had been prepared by him in respect of the sale of utensils when he sold the utensils to accused nos.1 and 2. If the sale was unauthorised, there was no question of the accused preparing any receipt in respect of the sale. Thus, it cannot be said that accused nos.2 and 3 were in unlawful possession of the said property.

9. The accused Bhosale has examined himself as defence witness no.1. He deposed that since 1981 he was working as canteen Manager of Lonavala

Rly.Station and his job was to purchase and sell the articles used in the canteen. The alleged utensils were not in use and were non-serviciable hence he was orally allowed by Committee members to dispose of the same. Therefore, the accused Bhosale called two persons i.e. accused nos.1 and 2 to purchase the same. The accused was bonafidely disposing of the said utensils. The prosecution has attacked the version of this witness in his cross examination but nothing could be brought on record to infer that he is deposing falsely. In such case, the defence put forward by the accused no.3 appears to be reliable and trustworthy.

10. Thus, looking to the evidence on record and the defence put forward by the accused nos.3, I am of the opinion that the view of acquittal taken by the learned Magistrate was a reasonable and possible view.

11. Apart from this, one cannot loose sight of the fact that impugned order of the acquittal was passed on 13th January, 1995 and almost more than nine and half years have passed since then. I am of the opinion that in petty cases like the instant one in which an amount of Rs.1500/- is involved, on account of efflux of time also, it would not be proper to

disturb the order of acquittal.

12. The learned Magistrate has given plausible reasons for acquittal in the impugned judgment. It is well settled that if the view of acquittal could have been reasonably arrived at, then the mere circumstance that the appellate Court could have taken a different view, would be no ground to interfere. In this connection, there is no dearth of authorities. To eschew prolixity, I am only referring to two of them i.e. **A.I.R. 1971 S.C. 66 (Khedu Mohton Vs. State of Bihar) and (2003) 1 S.C.C. 1 (C.Anthony Vs. K.G.Raghavan Nair).** In the case of **C.Anthony,** the Supreme Court has observed that unless findings of the trial Court are perverse or contrary to the material on record, the High Court cannot in appeal, substitute its findings merely because other contrary opinion was possible on the basis of the material on record. In my view, the view of acquittal was a reasonable and possible view.

13. In the circumstances, I find no merit in this appeal and the same is dismissed. The judgment and order of acquittal dated 13th January, 1995 passed by learned Judicial Magistrate F.C. (Rly.) Court, Pune in R.C.C.No. 152 of 1993, is confirmed. The

bail bonds of the accused shall stand cancelled.

[SMT.V.K.TAHILRAMANI,J.]

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CRIMINAL APPEAL NO. 674 OF 1995
(Union of India Vs. Anil Sawala Sonawane and Others)

Office Notes, office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders

Mr.A.S.Shitole, A.P.P. for State-appellant
None for Respondents 1 to 3 though served.

CORAM: SMT.V.K.TAHILRAMANI,J.

DATE : DECEMBER 2, 2004

. For the reasons mentioned separately in the judgment, the following order is passed:

. The judgment and order of acquittal dated 13th January, 1995 passed by learned Judicial Magistrate F.C. (Rly.) Court, Pune in R.C.C.No. 152 of 1993, is confirmed. The bail bonds of the accused shall stand cancelled.
Appeal dismissed.

(V.K.TAHILRAMANI,J.)